IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8255 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BHAVNAGAR DISTRICT PANCHAYAT &2 - Petitioner(s)

Versus

SARDULBHAI RAMSINHBHAI GOHIL C/O.VASANTBHAI PAMNANI -

Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1,2.

MR TR MISHRA for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 27/06/2005

ORAL JUDGMENT

Rule. Shri TR Mishra, learned advocate waives service of Rule on behalf of the respondent. With the consent of the learned advocates appearing for the parties, the matter is taken up for Final Hearing

today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioners, Bhavnagar District Panchayat and Deputy Executive Engineer, Irrigation Sub-Division, Bhavnagar have challenged the legality and validity of the order dated 22.11.2004 passed in Miscellaneous Application No. 22 of 2003 by the Labour Court at Bhavnagar in dismissing the application submitted by the petitioners for setting aside the ex-parte judgment and award dated 10th July 2002 passed in Reference (LCB) No. 101/1998 by the Labour Court, Bhavnagar. The petitioners have also challenged the legality and validity of the judgment and award dated 10th July 2002 passed by the Labour Court, Bhavnagar in Reference (LCB) No. 101/1998.

3. The respondent workman was serving as a Daily Wager Chowkidar and it appears that his services came to be terminated. He raised an industrial dispute which was referred to the Labour Court, Bhavnagar being Reference (LCB) No. 101/1998. It appears from the record that nobody remained present on behalf of the petitioners and therefore by ex-parte judgment and award dated 10th July 2002 the Labour Court, Bhavnagar, partly allowed the said Reference and directed the petitioners to reinstate the respondent workman by deducting only 4 months's salary. It appears from the record that being aggrieved and dissatisfied with the same the petitioners preferred Special Civil Application No. 1297 of 2003 which came to be disposed of by the learned Single Judge of this Court [Coram: Mr. H.K. Rathod, J.] by order dated 1.4.2003 on the ground that it is open for the petitioners to approach the concerned Labour Court under Rule 26-A by filing necessary application for getting the said ex-parte award set aside. It appears that thereafter the petitioners immediately preferred Miscellaneous Application No. 22 of 2003 in Reference (LCB) No. 101/1998 under Rule 26-A of the Industrial Dispute (Gujarat Rules) for getting the said ex-parte award passed by the Labour Court set aside. The Labour Court, Bhavnagar by order dated 22.11.2004 dismissed the said application on the ground that the petitioners have failed to produce any evidence justifying for not remaining present before the Labour Court. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Munshaw, learned advocate appearing on behalf of the petitioners has submitted that considering the facts of the present petition the petitioners have meritorious case and the Labour Court ought to have given one opportunity to the petitioners to defend their case and action and ought to have directed to decide the Reference on merits rather than dismissing the application on technicalities. He has submitted that at the most the Labour Court should have imposed some costs for the negligence which might be on the part of officers of the petitioners and therefore it is requested to allow the present Special Civil Application by quashing and setting aside the ex-parte judgment and award passed by the Labour Court, Bhavnagar by imposing some reasonable cost.

5. On the other hand, Shri Mishra, learned advocate appearing on behalf of the respondent workman has tried to support not only the ex-parte award but the order passed by the Labour Court in rejecting the application for setting aside the ex-parte award. He has submitted that in view of the fact that the petitioners were served with the notice of Reference it was the duty on the part of the petitioners to remain present and participate in adjudication and having not done so it is not open for the petitioners to make a grievance with regard to ex-parte award. Therefore it is requested to dismiss the present Special Civil Application by further submitting that the petitioners have failed to justify the action of not remaining present before the Labour Court.

6. Heard the learned advocates appearing on behalf of the parties. It is required to be noted that the petiitoners are the Public Bodies and looking to the functioning of the public bodies and the present trend, the Labour Court ought to have given one additional chance to the petitioners to defend their action and case by imposing reasonable costs rather than dismissing the application for restoration on technicalities. As held by this Court in the case of Patel Maganlal Dhanjibhai Godhasara.& Another Vs. Patel Laxmidas Naranbhai Kansagara,reported in **1987 (1) GLR Page 356,** a case should be decided on merits and a party should not be deprived of his right to get his case examined on merits. Considering the aforesaid facts and circumstances and in particular the petitioners being Public Bodies with a view to see that there may not be ultimate loss to the

public at large it is deemed just and proper to direct the Labour Court to giveone opportunity to the petitioners for deciding the Reference on merits and after doing so to quash and set aside the ex-parte judgment and award by directing the petitioners to pay a reasonable cost quantified at Rs. 12,500 to the respondent workman. If such a course is adopted and the Labour Court is directed to decide and dispose of the Reference after hearing the parties afresh, it will meet the ends of justice.

7. For the reasons stated above, the petition succeeds. The order passed by the Labour Court, Bhavnagar, dated 22.11.2004 in Miscellaneous Application No. 22 of 2003 as well as the judgment and award dated 10th July 2002 passed by the Labour Court in Reference (LCB) No. 101/98 are quashed and set aside on condition that the petitioners should pay an amount of Rs. 12,500 to the respondent workman within the period of six weeks. On payment of the said amount to the respondent workman, the Labour Court, Bhavnagar is directed to decide and dispose of the Reference (LCB) No. 101/98 afresh as early as possible preferably within the period of six months thereafter. Rule is made absolute to the aforesaid extent. The petitioners are also directed to pay the cost of the present Special Civil Application which is quantified at Rs. 1500.

[M.R. Shah, J.]

rmr.

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